

SENATE BILL No. 211

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-30-10.5.

Synopsis: Legal actions involving state liens. Establishes procedures for legal actions that involve state liens or other encumbrances on real property when the state elects not to respond.

Effective: July 1, 2005.

Bray

January 4, 2005, read first time and referred to Committee on Judiciary.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 211

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-30-10.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2005]:

4 **Chapter 10.5. Actions Involving State Liens**

5 **Sec. 1. If:**

6 **(1) the state has a lien or another encumbrance on real**
7 **property; and**

8 **(2) an action is brought concerning a lien or another**
9 **encumbrance on the real property that has greater priority**
10 **than the state's lien or encumbrance, including:**

11 **(A) an action:**

12 **(i) involving foreclosure of the prior lien or**
13 **encumbrance; or**

14 **(ii) that otherwise affects the lien or encumbrance of the**
15 **state; or**

16 **(B) an action brought to foreclose the equity of redemption**
17 **of the real property after a sale for unpaid taxes or another**



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1 municipal lien;
 2 the lien or encumbrance of the state and the priority of the state's
 3 lien or encumbrance may be considered in the action and decided
 4 by the court.

5 Sec. 2. (a) In an action described in section 1(2) of this chapter,
 6 notice that contains the following shall be sent to the state:

7 (1) The names of the parties.

8 (2) A description of the lien or encumbrance of the state.

9 (3) The date by which the state must answer. However, the
 10 time in which the state is required to answer must be the same
 11 as the time allowed for defendants who receive personal
 12 service in Indiana to file answers.

13 (4) If the lien or encumbrance is for an inheritance tax, the
 14 following, if known:

15 (A) The name of the decedent.

16 (B) The date of the individual's death.

17 (C) The state and county in which the individual resided on
 18 the date of death.

19 (D) The names and addresses of:

20 (i) the decedent's personal representatives; or

21 (ii) if personal representatives have not been appointed,
 22 the decedent's heirs at law.

23 (5) If the lien or encumbrance involves:

24 (A) unpaid corporate taxes; or

25 (B) interest, costs, or penalties imposed on unpaid
 26 corporate taxes;

27 the name of the corporation that is required to pay the
 28 corporate taxes.

29 (b) The plaintiff, the plaintiff's attorney, or the court clerk shall
 30 issue the notice.

31 (c) If the lien or encumbrance of the state is for:

32 (1) a tax payable to the state or for any other right or claim of
 33 the state, the notice shall be served on the attorney general;
 34 and

35 (2) a recognizance entered into or a criminal conviction
 36 entered in a county in Indiana, the notice shall be served on
 37 the prosecuting attorney of the county in which the
 38 recognizance was entered into or the criminal conviction was
 39 entered.

40 (d) The notice must be accompanied by a copy of the complaint.

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1 Sec. 3. (a) The state is not required to answer the notice
2 described in section 2 of this chapter or the complaint attached to
3 the notice.

4 (b) If the state fails to answer a notice described in section 2 of
5 this chapter or the complaint attached to the notice, the failure
6 may not be considered:

7 (1) a waiver of any rights of recourse against the debtor that
8 the state may have at law; or

9 (2) grounds for a default judgment against the state.

10 (c) If the state fails to answer a notice described in section 2 of
11 this chapter or the complaint attached to the notice, the state's lien
12 or encumbrance shall be extinguished unless a court explicitly
13 recognizes the state's lien or encumbrance under section 4(b)(2) of
14 this chapter. However, the extinguishment of the state's lien or
15 encumbrance under this subsection does not affect the state's right
16 of recourse against the debtor.

17 Sec. 4. (a) If the state answers a notice described in section 2 of
18 this chapter or otherwise appears before the court in the case:

19 (1) the action shall proceed as in other cases; and

20 (2) a judgment in the case binds the state, and the lien or other
21 encumbrance of the state may be released in the same manner
22 as if the judgment had been entered against an individual.

23 (b) If the state does not answer the notice described in section 2
24 of this chapter or the complaint attached to the notice or does not
25 otherwise appear before the court in the case:

26 (1) the action shall proceed as in other cases; and

27 (2) the lien or other encumbrance of the state identified in the
28 complaint may be:

29 (A) explicitly recognized in its proper priority in any order
30 of the court that affects the lien or other encumbrance of
31 the state; and

32 (B) paid out of any surplus remaining after liens or other
33 encumbrances that are superior to the lien or
34 encumbrance of the state are paid.

35 (c) In an action to foreclose the equity of redemption under a
36 sale for taxes or another municipal lien or in an action involving
37 strict foreclosure, a judgment may be entered that extinguishes a
38 lien or another encumbrance of the state on the real property
39 described in the complaint if:

40 (1) the state does not answer;

41 (2) a disclaimer is filed by the state; or

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- 1 **(3) the court determines that any part of the lien for the taxes**
- 2 **or other municipal lien that is foreclosed is superior to the lien**
- 3 **or encumbrance of the state.**

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